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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/678,366	10/03/2003	Gregg D. Wilensky	07844-617001	4008

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EXAMINER

SMITH, JEFFREY S

ART UNIT PAPER NUMBER

2635

DATE MAILED: 12/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/678,366

Applicant(s)

WILENSKY, GREGG D.

Examiner

Jeffrey S. Smith

Art Unit

2635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-48 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-48 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 October 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 12/05, 4/05, 10/04, 9/04, 9/04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the elements of claims 3-18, 20-23, and 27-48 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 25-42 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claim 25 recites a software product tangibly embodied in a machine readable medium. Page 18 of the application states that this includes a propagated signal. Therefore, this claim is non-statutory.

Claims 26-42 also can be software products embodied in a propagated signal, and are also non-statutory.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-43 and 48 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent Number 6,728,421 issued to Kokemohr ("Kokemohr").

For claims 1 and 25, Kokemohr discloses determining a first tone value for a first location within the image based upon attributes of pixels within a first neighborhood

surrounding the location, the first tone value specifying a local weight, determining a second tone value, and adjusting the image at the location using first and second tone adjustments according to local weights (see col. 8 lines 5-14 and 40-48).

For claims 2 and 26, the tone value is determined based upon a neighborhood intensity (see column 8 line 27).

For claims 3 and 27, the value of the local attribute depends on luminosity (see col. 8 line 27).

For claims 4 and 28, the value depends on a maximum color value (see col. 8 line 27).

For claims 5 and 29 the value is a weighted average of luminosity and maximum color (see for example col. 13 lines 53-59).

For claims 6 and 30, the neighborhood intensity is determined by averaging pixels (see for example eq. 3 where the weights are equal).

For claims 7 and 31, the Gaussian weights are discussed in col. 14 lines 60-67.

For claims 8 and 32, the difference weights are discussed beginning at col. 8 line 58.

For claims 9 and 33, the user input is discussed beginning with the title.

For claims 10 and 34, the shape can be defined by the user as discussed for example in col. 17 lines 37-40 and as shown in Fig. 4.

For claims 11 and 35, the first neighborhood and the second neighborhood are identical when the first tone value is for color and the second tone value is for luminosity, see for example col. 8 line 42.

For claims 12 and 36, a graphics object is identified, for example, as shown by element 32 in Fig. 4.

For claims 13 and 37, the identified graphics object includes lines, such as the apples shown in Fig. 4.

For claims 14 and 38, additional tone values are determined as shown for example in Fig. 5.

For claims 15 and 39, the additional tone value is determined based on first and second tone values as discussed with respect to the mixing function at col. 8 line 40.

For claims 16 and 40, the user input specifying size of the neighborhood is shown in the "area" section of Fig. 5.

For claims 17 and 41, the user input for strength is shown in Fig. 5.

For claims 18 and 42, negative symmetry is shown by the inversion function of col. 10 line 59.

For claim 43, the digital camera ipso facto has a CCD device (col 19 lines 20-25).

For claim 48, the digital camera is a portable device.

For claim 19, the local adjustment tool is shown in Fig. 5.

For claims 20 and 21, the image capturing device includes a digital camera, as discussed in col. 19 line 24.

For claims 22 and 23, the display device is shown in Fig. 4.

For claim 24, the user interface to set a value is shown in Fig. 5.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 44-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kokemohr.

For claims 44 and 45, Kokemohr does not explicitly state that the adjustment tool provides feedback to the digital camera. However, it is well known in the digital camera art to include an image processing algorithm in the digital camera to adjust image features such as color and luminance. Therefore, it would have been obvious to one of ordinary skill in this art at the time of invention to use the adjustment tool to provide feedback to the digital camera for the benefit of adjusting image features such as color and luminance.

For claim 46, Kokemohr does not explicitly state that the digital camera is located in a PDA, phone, or both. However, it is well known in the digital camera art to include a camera in a PDA and a phone. Therefore, it would have been obvious to one of ordinary skill in this art at the time of invention to include the digital camera and adjustment tool of Kokemohr in a phone or PDA.

For claim 47, Kokemohr does not explicitly state that the adjustment tool is located in a remote server. However, every electrical engineer everywhere in the world at the time of this invention knew that the adjustment tool running on a computer as

discussed in col. 19 could be located either on a local computer or on a remote computer that is accessible over the internet. Therefore, it would have been obvious to one of ordinary skill in this art at the time of invention to have the computer of Kokemohr function as a remote server that is accessed over the internet.

### ***Conclusion***

Several references listed in the information disclosure statements submitted in April 2005 and September 2004 are missing from the file for this application and therefore have not been considered. Applicant is required to submit these references in order for them to be considered.

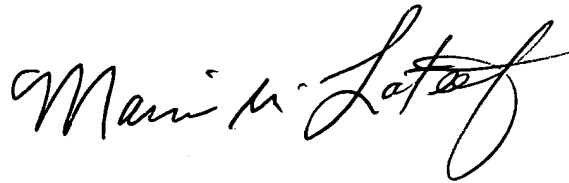
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey S. Smith whose telephone number is 571 270-1235. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marvin Lateef can be reached on 571 270-1245. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JSS  
JSS  
November 27, 2006



**MARVIN LATEEF**  
**SUPERVISORY PATENT EXAMINER**